

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	94 CR 280 - 1	DATE	3/13/2001
CASE TITLE	USA vs. Ricardo Rivera		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

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(11) ■ [For further detail see order attached to the original minute order.]

DOCKETED

MAR 14 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) No. 94 CR 280-1
)
)
RICARDO RIVERA,)
)
)
Defendant.)

MEMORANDUM ORDER

Ricardo Rivera ("Rivera") continues to try to upset the sentence that this Court imposed a number of years ago in conformity with Rivera's Fed. R. Crim. P. 11(e)(1)(C) plea agreement with the government. With this Court having issued memorandum orders on February 1 and February 20, 2001 in response to those continued efforts, the first of those having denied Rivera's recently-filed motion for a reduction of his sentence and the second having granted him another 30 days beyond February 11 within which to file a notice of appeal from that denial, Rivera now requests that he be sent forms for a possible 28 U.S.C. §2255 motion as well as any appropriate information relating to Fed. R. Civ. P. 60(b).

This Court is indeed sending Section 2255 forms to Rivera with a copy of this memorandum order. As for Fed. R. Civ. P. 60(b), it really plays no part here, for Rivera has said nothing to suggest either the applicability of that Rule or any basis for relief that might be obtained through that avenue. But Rivera is

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advised that because his earlier motion for reduction of his term of imprisonment effectively amounted to a motion for relief under Section 2255, he cannot file a "second or successive" Section 2255 motion in this District Court without first getting permission from our Court of Appeals (see 28 U.S.C. §2244(3) and the relevant portion of Section 2255, a copy of each of which is attached to this memorandum order).



Milton I. Shadur
Senior United States District Judge

Date: March 12, 2001

28 U.S.C. §2244

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a *prima facie* showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

28 U.S.C. §2255

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.